*THE HONOURABLE Dr. JUSTICE G. YETHIRAJULU

+Writ Petition No.13205 of 2004

% Dated: 05-11-2004.

#M.Nanda Kisohore Naik**. … Petitioner**

$ The General Manager, Indian Oil Corporation Ltd., Himayathnagar, Hyderabad & 3 others.

… Respondents

! **Counsel for petitioner: Mrs. S. Nanda**

^ **Counsel for respondent Nos.1 to 3 : Mr.P.V.Sanjay Kumar**

Counsel for respondent No.4: Mr.P. Narasimha

< GIST:

>HEAD NOTE:

? Cases referred:

1. 1999 (6) ALD 89
2. 2003 (6) Supreme 471 (followed)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

WRIT PETITION NO : 13205 of 2004

Between:

Mr.M.Nanda Kishore Naik s/o.M.Lal Singh Naik
r/o. H.No.87-1196, Revenue Colony, Phase-II Nandyal Road, Kurnool District.

... PETITIONER

AND

1. **The General Manager, Indian Oil Corporation Limited, 3-6-436 to 438, II Floor, Naspur House Himayatnagar.**
2. **The Chief Divisional Retail Sales Manager, Indian Oil Corporation Limited, Divisional Office, 3-6-436 to 438, II Floor, "Naspur House", Himayathnagar, Hyderabad-500029.**
3. **The Senior Manager (Retail Sales), Indian Oil Corporation Limited, Divisional Office, 3-6-436 to 438, II Floor, "Naspur House", Himayathnagar, Hyderabad-500029.**
4. **Smt.Pavani W/o.Narayana Naik Deputy Superintendent of Police, Utnoor, Adilabad District.**

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ order to direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in proposing to appoint the 4th respondent herein as Retail Outlet dealer at Garledinne location, Anantapur District as highly illegal, unjust, arbitrary biased and violative of principles of natural justice and to forthwith set aside the selection of the 4th respondent as Retail Outlet dealer at Garledinne location, Anantapur District and pass.

Counsel for the Petitioner: Mrs.S.Nanda

Counsel for the Respondent Nos.1 to 3: Mr.P.V.Sanjay Kumar

Counsel for the Respondent No.4: Mr.P. Narasimha

The Court at the admission stage made the following:

ORDER:

1. The respondents 1 to 3 proposed to appoint a dealer for a retail outlet at Garledinne village in Anantapur District. The petitioner made an application for dealership along with others in response to a notification dated 19-12-2003 published in "The Hindu" daily newspaper. He belongs

to a Scheduled Tribe. He is a Bachelor in Technology in EEE Group and also a diploma holder in “C” and “C++” languages. He also gained some experience as a Manager at Sri Lakshmi Narayana Service Station from 1-1-2003 to

1-11-2003. He was called for the interview along with other applicants on 7-6-2004. He fared well in the interview and produced all relevant documents as per the notification. The result was displayed in the Notice Board on the same day showing him at S.No.2, and the fourth respondent at S.No.1. The petitioner contends that he is the highly qualified among all the 29 candidates who attended the interview and has the additional qualification of proficiency in the languages of Computer Science whereas the fourth respondent is only a Graduate. He is entitled for certain benefits by virtue of his belonging to Scheduled Tribe and he is financially sound to offer security. The fourth respondent is a non-professional without any experience and she is the wife of a Deputy Superintendent of Police, Utnoor in Adilabad District. Though he is better qualified than the fourth respondent, the selection was not made in a just and fair manner. The petitioner therefore approached this Court through this writ petition seeking to declare that the action of respondents 1 to 3 in proposing to appoint the fourth respondent as a Retail Outlet Dealer at Garledinne location, Anantapur District as illegal, unjust, arbitrary, biased and violative of the principles of natural justice and to set aside the same.

2. The respondents 1 to 3 filed a counter-affidavit resisting the writ petition and the averments made in the counter-affidavit are briefly as follows:

3. The selection for the dealership was made by a duly constituted Selection Committee as per the prescribed norms and guidelines. The petitioner approached this Court wholly on imaginary and illusory grounds. The members of the Selection Committee are senior officers of the Oil Corporation. The selection was made strictly as per the norms and procedure prescribed by the Ministry of Petroleum and Natural Gas, Government of India. The fourth respondent was empanelled by the

Selection Committee as the most meritorious candidate and the petitioner was placed at the second position on an objective assessment made by the members of the Selection Committee. The assessment was made by the members of the Selection Committee under various heads viz., capability to arrange finance, educational qualifications, capability of generating business, business ability/acumen, age, experience, and personality. The petitioner questioning the selection by treating the writ petition as an appeal cannot be permitted. The assessment made by the Selection Committee as per the norms cannot be re-evaluated in this writ petition. After the empanelment of the candidates, the Corporation is required to undertake a field investigation to verify the antecedents and claims of the selected candidate. This process consumes sometime and only thereafter a Letter of Intent will be issued to the selected candidate. The writ petition is liable to be dismissed as devoid of merits.

4. The fourth respondent filed a counter contending that she secured 82% of marks in S.S.C., 78% in Intermediate and 68.7% in B.Tech (Computer Science) examinations. The petitioner passed the B.Tech degree in second division with 53% marks whereas she passed with 68.7% marks. The fourth respondent is better qualified than the petitioner. The petitioner has not made out any case warranting interference by this Court. There are no merits in this writ petition, therefore, it is liable to be dismissed.

5. The petitioner filed replies to the counter-affidavits filed by respondents 1 to 4 mainly contending that the respondents 1 to 3 failed to explain as to how the fourth respondent is a better candidate when compared to the petitioner and that the only consideration being the fourth respondent happens to be the wife of a Deputy Superintendent of Police who was recently selected under Group-I Services through A.P.Public Service Commission and working as such at Utnoor in Adilabad District. The petitioner further contended that since there is no scope for the husband of the fourth respondent working in Anantapur District, she will not be in a position to pay attention for managing the affairs of the outlet.

6. In the light of the contentions raised by both parties, the point for consideration is:

> Whether there are sufficient grounds to interfere with the order of the respondents 1 to 3 selecting the fourth respondent as a dealer for the retail outlet and whether the selection of the fourth respondent is liable to be cancelled?

Point:

7. The petitioner and the fourth respondent are applicants along with others for the dealership. They were interviewed by three senior officers of the respondent Corporation. The petitioner attributes bias to respondents 1 to 3 on the ground that the fourth respondent was preferred on account of her being the wife of a Deputy Superintendent of Police of Adilabad District. Before testing whether there was transparency in the selection and whether the procedure prescribed under the guidelines have been followed in selecting the dealer, I wish to refer to the legal position in this regard.

8. In **Y.Chandraiah v. Union of India and others** a single Bench of this High Court held that whenever a selection is made by the Selection Committee by allotting marks to the applicants for selection of dealership of a retail outlet of the Corporation, the High Court cannot interfere with the said selection.

9. In **K. Vinod Kumar v. S. Palanisamy and others** the Supreme Court while dealing with the matter regarding allotment of L.P.G. Distributors held that over the proceedings and decisions taken in administrative matters, the scope of judicial review is confined to the decision making process and does not extend to the merits of the decision taken. No infirmity is pointed out in the proceedings of the Selection Board which may have the effect of vitiating the selection process.

10. In the case covered by the above decision, the Supreme Court while referring to the “decision making process” observed as follows:

> The proceedings of the Dealer Selection Board must satisfy the requirements of a *bona fide* administrative decision arrived at in a fair manner. There are no mala fides alleged against the Dealer Selection Board or the President or any Member thereof. There is no specific plea raised impugning the manner of marking. It appears that all the three members of the Board including the President conducted the proceedings, and each one of them gave marks expressing his own assessment of the merits of the applicants. The marks given by the three were then totaled and arranged in the order of merit. The appellant herein topped the list. In the absence of a particular procedure or formula having been prescribed for the Board to follow, no fault can be found with the manner in which the proceeding were conducted by the Board. The Board is entrusted with the task of finding out the best suitable candidate and, so long as the power is exercised *bona fide*, the Board is free to devise and adopt its won procedure subject to satisfying the test of reasonableness and fairness. There is no averment that the procedure adopted by the Board was arbitrary, unfair or unreasonable.

11. From the above judgment of the Supreme Court it has to be borne in mind that the judicial review has to be confined to the "decision making process" and it shall not be extended to the merits of the decision making.

12. The petitioner did not point out either the procedural irregularity or lack of transparency in the process of selection. His only suspicion is that as the fourth respondent is the wife of a Deputy Superintendent of Police, the respondents resorted to favour her by ignoring his claims though he is more meritorious than the fourth respondent. Without going into the merit of the candidates, I wish to refer to the "decision making process" followed by the respondents.

13. The respondents 1 to 3 issued a notification on 19-12-2003 in "The Hindu" Daily calling for applications from the eligible persons for allotment of dealership for the retail outlet at Garledinne in Anantapur District. After receipt of the applications from the eligible candidates, the respondent Corporation constituted a Selection Committee containing a Senior Manager (RS), Senior Manager (Engineering) and a Senior LPG Manager (S). Interviews were conducted on 7-6-2004. The members of the Selection Committee assessed the merit of the candidates separately by

allotting marks for capability of providing finance, educational qualifications, capability to generate business, age, experience, business ability/acumen and personality by allotting marks separately under each head to each candidate and no marks have been allotted to all the candidates regarding the capability to provide land and infrastructural facilities. I had the benefit of personally verifying the original statements of performance of the candidates of each member of the Selection Committee. They relate to 17 candidates who attended the interview. On the basis of the marks allotted by each member to each candidate, a consolidated statement has been prepared on the same day and it was duly signed by all the three Selection Committee members. A certificate is also enclosed to these performance sheets to the effect that none of the committee members have any relationship with any of the 17 candidates interviewed at Hyderabad for the dealership of the retail outlet at Garledinne and it was also signed by all the three members of the Committee. As per the consolidated statement, the fourth respondent secured 49.33 marks and the petitioner secured 49.0 marks and the third candidate got 45 marks. On the basis of the marks allotted by the Selection Committee, the list was exhibited in the Notice Board indicating the fourth respondent at Serial No.1, petitioner is at Serial No.2 and another person at Serial No.3 in the order of merit.

14. After carefully going through the record produced by the respondent Corporation through their counsel in a sealed cover, I am convinced that the members of the Selection Committee have taken pains to assess the merit of each candidate on various aspects and allotted marks under various sub-heads under each head separately and finalized the merit list on the same day without scope for any comment for the delay, if any, that is likely to be caused. On perusal of the record I am also convinced that there is transparency in assessing the merit of each candidate and in arriving at a final list of candidates in the order of merit. The petitioner could not point out any violation of the procedure at any stage of the proceedings and I do not find any flaw in the “decision making process”. Since the respondents adopted the decision taken by the

Selection Committee through its administrative action, I do not find any infirmity in the proceedings of the Selection Committee or that of the respondents 1 to 3 leading to vitiate the selection of the fourth respondent. There are no justifiable grounds to interfere with the decision of the Selection Committee and consequentially the selection list exhibited by the respondents. I do not find any arbitrariness or unfairness in the procedure adopted by the Selection Committee. In the absence of any particular procedure or formula prescribed to be followed, no fault can be found with the manner in which the proceedings were conducted by the Selection Committee which successfully achieved the task of finding the best suitable candidate for the dealership of the outlet and I am also convinced that the Selection Committee exercised its power bona fide by acting "fairly" and "reasonably" in the process of selection. In the light of the above circumstances, I do not find any merits in the writ petition and the petitioner is not entitled for the relief as prayed for. The writ petition is accordingly dismissed.

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(Dr.G.Yethirajulu, J)

05th November 2004

Note:

L.R. copy be marked

(By order)

svs

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. One fair copy to the Hon'ble Dr.Justice G.Yethirajulu for his lordships kind perusal.
2. The General Manager, Indian Oil Corporation Limited, 3-6-436 to 438, II Floor, Naspur House Himayatnagar.
3. The Chief Divisional Retail Sales Manager, Indian Oil Corporation Limited, Divisional Office, 3-6-436 to 438, II Floor, "Naspur House", Himayathnagar, Hyderabad-500029.
4. The Senior Manager (Retail Sales), Indian Oil Corporation Limited, Divisional Office, 3-6-436 to 438, II Floor, "Naspur House", Himayathnagar, Hyderabad-500029.
5. Smt.S.Nanda, Advocate (OPUC)
6. Sri P.V. Sanjay Kumar, Advocate (OPUC)
7. Sri P. Narasimha, Advocate (OPUC)
8. 8 L.R.Copies.
9. The under Secretary, Ministry of Law, Justice & Company affairs, Newdelhi
10. The Secretary, A.P. High Court, Advocates Association, Library, High Court Buildings, Hyderabad.
11. 2 CD copies